



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201051027

SEP 29 2010

Uniform Issue List: 402.08-00

SE: T: EP: RA: T3

**Legend:**

Amount A =

Year 1 =

Year 2 =

Year 3 =

Month 1 =

Month 2 =

Date 1 =

Airline X =

Dear :

This is in response to a request submitted on your behalf by your authorized representative dated August 15, 2009, as supplemented by correspondence dated November 24, 2009, and March 22, 2010, in which you request a waiver of the 180 day rollover requirement contained in section 125 of the Worker, Retiree and Employee Recovery Act of 2008 (WRERA).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

You were a qualified airline employee who worked for Airline X. Airline X entered into bankruptcy proceedings during Year 1. During the period Year 2 to Year 3 you received Amount A from Airline X. Amount A was paid to you by Airline X in order to offset the termination of Airline X's qualified retirement plan and was paid pursuant to an order of a Federal bankruptcy court.

For purposes of this ruling, the Internal Revenue Service assumes that Airline X's retirement plan is a plan qualified within the meaning of section 401(a) of the Internal Revenue Code (the "Code") as provided in section 125 of WREERA.

WREERA was signed into law in December, 2008. WREERA, among other things, allows a qualified airline employee who receives an airline payment amount 180 days to transfer the airline payment to a Roth individual retirement account (Roth IRA). If the transfer is completed timely, the contribution is to be treated as a qualified rollover contribution described in section 408A(e) of the Code.

During Month 1, 2009, which was prior to Date 1, 2009, you were notified by Airline X of the above WREERA provision. As part of this notification, you received a mailed notice that the transfer into a Roth IRA had to be completed no later than Date 1, 2009, which date is 180 days from the date of enactment of WREERA. Only transfers made on or before Date 1, 2009, qualified for the special Roth IRA contribution treatment afforded by WREERA. There is no hardship exception or similar provision in WREERA that allows for an extension of the 180 day transfer period.

You explain that although you did receive this notice during Month 1, 2009, you did not read the notice until Month 2, 2009, which was after Date 1, 2009 because you were very ill during that time period. You have provided to the Internal Revenue Service extensive documentation which substantiates your being ill during calendar year 2009. You explain that due to your extreme illness you were not aware of the need to complete, or able to complete, the transfer on or before Date 1, 2009.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 180 day timeframe imposed by section 125 of WREERA on airline payment amounts. As part of your request, you cite the Internal Revenue Service's authority to waive violations of the 60-day period provided for in section 402(c)(3)(B) of the Code and argue for analogous treatment with respect to your airline payments.

With respect to your ruling request, section 402(a)(1) of the Code provides that, except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72.

Section 402(c)(1) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(4) of the Code provides, in general, that an "eligible rollover distribution" means any distribution to an employee of all or any portion of the balance of the credit of the employee in a qualified trust. Section 402(c)(4) also provides, in relevant part, that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9), any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made (i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancy) of the employee and the employee's designated beneficiary, or (ii) for a period of ten years or more, or (iii) any distribution that is made upon the hardship of the employee.

Section 402(c)(8) of the Code, in relevant part, defines "eligible retirement plan" as (i) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract), (iii) a qualified trust, (iv) an annuity plan described in section 403(a), (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b).

Section 1.402(c)-2, Question and Answer 11, of the Income Tax Regulations states that if an eligible rollover distribution is paid to an employee and the employee contributes all or part of the eligible rollover distribution to an eligible retirement plan no later than the 60th day following the date the employee received the distribution, the amount contributed is not currently includible in gross income.

Section 402(c)(3)(A) states that, except as provided in subparagraph (B), any rollover within the meaning of Code section 402(c) must be accomplished within 60 days of the day on which the distributee received the property distributed.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 408A(c)(6)(A) of the Code provides that no rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution.

Section 408A(e) of the Code provides that the term "qualified rollover contribution" means a rollover contribution to a Roth IRA from another such account, from an eligible retirement plan if the rollover meets the requirements of section 408(d)(3), and in the case of any eligible retirement plan defined in section 402(c)(8)(B)(iii), such rollover contribution meets the requirements of section 402(c) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408 (d) (3) (I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Section 125(a) of the Worker, Retiree and Employee Recovery Act of 2008 provides that if a qualified airline employee receives any airline payment and transfers any portion of such amount to a Roth IRA within 180 days of receipt or, if later, within 180 days of enactment of the Act, then such amount (to the extent so transferred) shall be treated as a qualified rollover contribution described in section 408A(e) of the Code.

Section 125(b)(1) of WRERA provides, in relevant part, that an "airline payment amount" is a payment of money or other property payable by a commercial passenger airline carrier to a qualified airline employee (i) under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001 and before January 1, 2007.

Section 125(b)(2) of WRERA provides that the term "qualified airline employee" means an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained by the carrier which —(A) is a plan described in section 401(a) of the Code which includes a trust exempt from tax under section 501(a), and (B) was terminated or became subject to the restrictions in paragraphs (2) and (3) of section 402(b) of the Pension Protection Act of 2006.

Initially, the Service notes that the payments received by you from Airline X do not constitute "eligible rollover distributions" as that term is used in section 402(c) of the Code. Thus, these payments are not described in section 402(c) of the Code and do not qualify for an extension of the 180 day period referenced in

section 125 of WREERA because of the application of section 402(c)(3)(B) of the Code or for treatment analogous to that provided under said Code section.

Section 125 of WREERA provides that the airline payments, which were received by you as a result of a Federal bankruptcy order, take on the character of a qualified rollover contribution because of the operation of section 125 of WREERA and only if they are transferred to a Roth IRA within the applicable time period provided under section 125 of WREERA. Section 125 of WREERA contains no provision which would permit the Service to extend the 180 day period contained therein, nor do we believe its provisions authorize the Service to permit a taxpayer to complete a transfer to a Roth IRA outside of the time frame found in section 125 of the WREERA by reference to any other section of the Code.

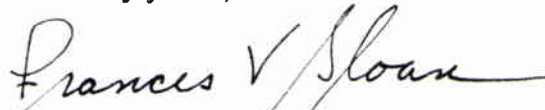
Under the circumstances presented in this case, the Service hereby declines to waive the 180-day rollover requirement with respect to Amount A because it does not have the authority to do so. The amounts you received stemming from the bankruptcy of Airline X do not constitute "qualified rollover contributions" as that term is used in section 125 of WREERA. Therefore, your proposed contribution of Amount A to a Roth IRA will not be considered a valid rollover contribution eligible for the special tax treatment outlined in section 125 of WREERA.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110 (k) (3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. If you wish to inquire about this ruling, please contact XXXXXXXXXXXXXXXXXXXXXXXX by phone at XXXXXXXXXXXXXXXXXXXXXXXX XX Please address all correspondence to XXXXXXXXXXXXX.

Sincerely yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose